WP(C) 4750/2007

BEFORE

HON'BLE THE AMITAVA ROY

The challenge is laid against the office order dated 20/8/2007 by the Manager (HP and ES), Hindustan Paper Corporation Ltd., Nagaon Paper Mill, Kagajnagar, (hereafter referred to as the Corporation) transferring the petitioner from Central Stores in the Commercial (Stores) Department to the Converting Section as Operator Grade I.

2. I have heard Mr. N. Deka, learned Counsel for the petitioner and Mr. J. Roy, learned Standing Counsel for the Corporation.

3. The abridged version of the petitioner is that he was appointed as Technician Trainee (Welder) by the Corporation w.e.f. 21/3/1984. By then he had obtained a National Trade Certificate at the Industrial Training Institute, Nagaon, in the trade of Welder in July 1977. After a one-year stint of training at the Corporation, his services were regularized as Welder (Trainee) in the Class IV of its services w.e.f. 20/3/1985. His services were thereafter confirmed w.e.f. 20/3/1986 on satisfactory completion of probation. He was promoted thereafter in the same grade and he eventually rose to the rank of Technician Grade-I w.e.f. 1/10/2005. Till 7/10/2002, the petitioner has been continuing in the Mechanical Division as a Welder. By order dated 7/10/2002, however, he was transferred to the Commercial (Stores) w.e.f. 8/10/2002. It is by the impugned order as above that he has been transferred to the Converting Section as the Machine Operator Grade I from Welder Grade I.

4. The petitioner has asserted that this has resulted in a change in the nature of his trade and though posts of welder are lying vacant with the Corporation and are being manned by contract personnel, qualified welders like him are being diverted to attend to other works. This, the petitioner, has contended, amongst others is in contravention of Clause 18 of the Certified Standing Orders of the Corporation (hereafter referred to as Standing Orders).

5. The Corporation in its affidavit while endorsing the impugned decision has pleaded that the arrangement is necessitated in administrative exigency. With the gradual reduction of the welding jobs in the Mechanical Department and requirement of manpower at Stores, the petitioner amongst others was transferred to the Converting Section under the Finishing House as Operator Grade-I with three months in-house training to get adapted to the job of the cutter machine operator. The Corporation has sought to explain that at the new place of posting, the petitioner would be required to adjust the cutter machine for cutting paper rolls into different required sizes and thereafter to cut the paper into sheets/reels by operating the machine. It has been contended that bearing in mind the technical background of the petitioner and anticipating that with the in house job training, he would perform the works in the Converting Section satisfactorily, he has been identified therefor. The Corporation has assured that the job against which the petitioner has been transferred does not require any special skill or previous experience and does not involve operation of heavy equipments. On the other hand, his technical experience can be utilized to its full potential at the new work site. The postings envisaged by the impugned order devise a pattern to encourage optimum utilization of manpower and as the petitioner in fact has not been performing the welding jobs for the last five years, his grievance is misplaced.

6. In its additional affidavit, the Corporation while admitting that the petitioner is a workman encadered in Class III category of employees adjudged by his pay scale and the organizational classification based thereon, has iterated that the petitioner at the Converting Section would be required to handle the machine through computer methodology and application, like bar coding for which a basic three months job training would be provided to him. It has been averred that he would be required to handle computerized board through buttons and in no case would be exposed to heavy machinery. It has been emphasized that transfer is an incidence of service and that in the appointment letter issued to him, the petitioner had been intimated at the first instance that he would be liable to be transferred to any department/section of the project or to any office of

the corporation/project or its subsidiary company anywhere in India. The Corporation has confirmed that by the impugned transfer the petitioner's pay and other conditions of service would not be adversely effected. It has been contended that the transfer too is permissible under Clause 18 of the Standing Orders as in the opinion of the Corporation, the jobs required to be undertaken by the petitioner at the Converting Section would be similar to those being performed by him.

7. Mr. Deka has urged that the petitioner's transfer to the Converting Section involves change in trade, he being a trained welder, which is impermissible under Clause 18 of the Standing Orders. While contending that the works expected to be performed as Machine Operator at the Converting Section are wholly dissimilar to that of the Welder Grade I, the learned Counsel has argued that his engagement with the Cutting Machine in view of his advanced age and failing agility and reflexes would not be out of risk. Mr. Deka has contended that the change in trade at the fag end of the career would also leave the petitioner with rusted welding skills prejudicially disabling him from eking out his livelihood after his retirement. The learned Counsel maintained that the petitioner's transfer is opposed to the letter and spirit of Clause 18 of the Standing Orders. In support of his submissions, the learned Counsel has placed reliance on the decision in ET Kuriyak etc, (1979) 2 SLR 508.

8. In reply Mr. Roy has argued that the nature of the job at the Converting Section though not exactly identical to that of a welder, has been assessed by the Corporation to be similar so much so that with the in house training the petitioner with his technical background would be equipped to perform the same reasonably well. Reiterating the pleaded stand of the Corporation, the learned Counsel urged that the arrangement has been conceived of in the interest of the institutional needs. As with time welding works in the Corporation are reducing, maximum utilization of the man power available has been designed. The learned Counsel contended that the petitioner has been picked up for his technical background and that the works to be performed at the Converting Section in view of the sophisticated machineries installed would not expose him to any risk whatsoever. Mr. Roy has urged that transfer being a condition of service and as the impugned order does not adversely affect any of his service conditions, the assailment is unsustainable in law.

8A. The pleadings of the parties and the rival submissions have received the anxious consideration of the Court. The service profile of the petitioner, indicates that he had been inducted in the roll of the Corporation as a welder and after being appointed as a Technician Trainee (Welder) was regularized, confirmed and promoted eventually to the rank of Technician Grade I. He was transferred to the Commercial (Stores) Depot w.e.f. 8/10/2002, which involved estrangement from his Welder Trade. Almost five years thereafter he is now sought to be posted out to the Converting Section as a Machine Operator Grade I. The petitioner seemed to have no reservation on his earlier transfer to the Commercial (Stores) Department. There is no complaint either in praesenti that his pay or other conditions of service have suffered thereby. There is no wrangle either that transfer is an incidence of his service. The order dated 20/8/2007 is composite in form involving eight employees of the Corporation similarly transferred from one department/section to the other. In house training for all have also been decided to be provided to them. The present therefore is not an instance where the petitioner has been hand picked for a discriminatory or unfair or unequal treatment.

9. Though Clause 18 engrafts certain restrictive precepts in the matter of transfer, if the pay, grade, continuity and conditions of service are not adversely effected, a transfer from ane establishment/section or job to any other establishment is permissible thereunder if in the opinion of the Management the jobs to be administered on transfer are of similar nature to the ones undertaken by him earlier and are capable of being performed without a special skill or previous experience. The above provision of the Standing Order thus demonstrates that the jobs or works to be performed on transfer need not be exactly the same and a reasonable likeness with the works executed earlier would be sufficient

if can be attained by the workmen without applying any special skill or past experience. The opinion of the Management as contemplated in the above provision essentially envisages an element of subjectivity and value judgment and, therefore, if manifestly not illogical, irrational or absurd would not draw interference in the exercise of power of judicial review.

10. The Corporation has emphasized that with the reduction of welding works, technicians employed earlier thereat, in the interest of optimum utilization of available resources have been adjusted in other establishments/sections to cater to the administrative needs. It has been asserted that the petitioner with his technical background and the in house training to be extended would be proficient for the works at the Converting Section. There has been an unambiguous assurance that having regard to the devices and the manner of operation thereof, the petitioner would not be exposed to any risk of the kind as apprehended by him. There is no persuasive reason to dismiss the statements affirmed by the Manager (Legal) of the Corporation as pretentious. The petitioner's misgivings in this regard appear to be speculative. His plea that his engagement with the Converting Section would blunt his welding skills is unconvincing as he had without any demur served in the Commercial (Stores) Depot for last five years. A hair splitting analysis of the subtle differences of the works as a welder Grade I in the Mechanical Division and Machine Operator at the Converting Section as projected by the petitioner to repudiate the impugned decision is not warranted in the exercise of the present jurisdiction.

11. The materials available on record do not proclaim that the petitioner is a Class IV employee and therefore under Clause 18 of the Standing Orders cannot be transferred from one establishment or the other without his consent. This is more so in view of the unrebutted stand of the Corporation that he though a workman is encadered in Class III of its services. The decision in ET Kuriyak etc, supra, turns on its own facts and does not lay down any legal proposition of general application to be of any avail to the petitioner.

For the forgoing conclusions, I am of the view that the impugned order of transfer does not merit interference. The petition thus being without any merit is dismissed. No costs.